

DIVIDED SURFACE AND MINERAL ESTATES

Survey of Split Estates, Implied Easement, Accommodation Doctrine, and Select Emerging Issues

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Overview

- Definition of Estates
- Implied Easement
- Emerging Issues:
 - Off-lease drilling
 - Subsurface freshwater/saltwater
 - Groundwater mining
 - Sand Mining
 - Superadjacent airspace
 - Rock Pore Space



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Definition of Estates: Surface and Minerals



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Severed Estates

- Early History – *Ad Coelum* Doctrine
- Modern: Real Estate divisible into parts/rights
- One division: Surface/Minerals



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Defining Scope of the Estates

Surface Destruction Test (Early Texas)

- **Early cases:** “oil, gas, and other minerals”
- **Test:** intent-based, balancing test:
 - proximity to surface
 - Whether extraction results in “substantial” destruction
- **Severances prior to June 8, 1983**
- **Problems:**
 - Lack of certainty in land titles
 - Not based on nature of substance, common understanding, chemical quality, or composition
 - Some odd results (example: uranium, iron)



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"Emerging and Re-emerging Issues in the Use of the Surface for Oil and Gas Operations"